IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 22-31641-mvl7
	)	Dallas, Texas
GOODMAN NETWORKS, INC., GOODMAN NETWORKS, INC. D/B/A GOODMAN SOLUTIONS	)	
	)	December 20, 2022
Debtor.	)	11:04 a.m.
	)	

TRANSCRIPT OF HEARING ON

CLOSING ARGUMENTS RE: MOTION TO CONVERT CASE FROM CHAPTER 7 TO 11 FILED BY DEBTOR GOODMAN NETWORKS INC D/B/A GOODMAN SOLUTIONS (133)

BEFORE THE HONORABLE MICHELLE V. LARSON

UNITED STATES BANKRUPTCY COURT

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Also Present:	Russell Nelms (Telephonically) Scott Seidel, Chapter 7 Trustee (Webex)

THE CLERK: Please be seated.

THE COURT: Good afternoon. Well, good morning. It's still morning. Good morning, everyone. We are here on our 11 o'clock docket. We have one matter on the docket this morning and that's case number 22-31641 Goodman Networks, Inc. and Goodman Networks. I'll take appearances for the record, and I'll start with those in the courtroom.

MR. PARHAM: Good morning, Your Honor. David Parham from Akerman on behalf of the debtor. Also appearing with me is Laura Taveras. Mr. Nelms, I believe, is on the telephone, and I think that Mr. Goodman will be joining us. He had a funeral this morning. And so he may be dialing in a little bit late.

THE COURT: Okay. Fair enough. Thank you very much.

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina, proposed general counsel for the trustee. The trustee I believe is on the line, as is my partner Thomas Berghman.

THE COURT: All right.

MR. SEIDEL: Scott Seidel's here on the video, Your Honor. Thank you.

THE COURT: Good morning. Me and Mr. Seidel are old friends from the 9:30 docket.

Mr. Rudd (ph.), would you like to make an appearance?

MR. RUDD: No, ma'am.

THE COURT: Okay. Thank you. All righty.

Is there anyone on Webex who would like to make an appearance?

MR. SILVERSTEIN: Good morning, Your Honor. Paul Silverstein, Brian Clarke, and Philip Guffy from Hunton Andrews Kurth for the original petitioning creditors.

THE COURT: Good morning.

UNIDENTIFIED SPEAKER: Good morning.

MS. SIXKILLER: Your Honor, sorry. Your Honor, Laura Sixkiller and Ryan Sullivan for ARRIS Solutions.

THE COURT: Good morning.

MS. SIXKILLER: Good morning.

MR. LANGLEY: Good morning, Your Honor. Adam Langley, Cam Hillyer, Will Perry, and Candice Carson for FedEx.

THE COURT: Good morning.

SCHAFFER: Your Honor, Eric Schaffer for UMB Bank as indenture trustee.

THE COURT: Good morning, Mr. Schaffer.

All righty. Is there anyone else who wishes to make an appearance this morning? If you're on the phone, you can press star 6 to unmute. Or if not, you can just unmute your audio. All righty. Appears we have all our appearances.

I think when we last concluded the hearing yesterday -- seems like so long ago, both parties -- or excuse

me. All parties had concluded evidence. And all that we had left today were closing arguments. Am I correct?

MR. PARHAM: That's correct.

THE COURT: All righty. Have the parties discussed at all the order of their presentations? I would assume the debtor would go last. Is there any -- have there been any agreements, or does anyone have any proposition in that regard?

MR. PARHAM: We haven't, Your Honor. We haven't discussed it, but my impression I guess from yesterday -- I'm not sure where I got the impression, was that the debtor would be last, so that's fine with us.

THE COURT: Makes sense. Okay.

MR. RUKAVINA: Your Honor, then I'll start.

MR. SILVERSTEIN: Your Honor, why is the debtor last?

THE COURT: Why is the debtor --

MR. SILVERSTEIN: Why is the debtor not going first?

THE COURT: Because the debtor is the movant, and the debtor gets to respond to the objections.

MR. SILVERSTEIN: Okay.

THE COURT: All right. Mr. Rukavina.

MR. RUKAVINA: Thank you, Your Honor. Let me begin, Your Honor, with the most elemental issue here, which is corporate authority to file a Chapter 11. So we're going to discuss standing. We're going to discuss the trustee's role.

We're going to discuss various other issues, but it seems like to me that the debtor has failed to look at basics. So first, I think this is a very important conclusion, which is that the debtor bears the burden of proof on eligibility under 109.

I don't think that this should be in much dispute, Your Honor, but I pulled some case law, just in case the Court needs it. There is no binding precedent from the Fifth Circuit. We have 465 B.R. 507 that talks about certain circuit law as well. It concludes that a debtor always has The burden on eligibility for 109. I have 98 B.R. 584, same. And I have 636 B.R. 416, same.

I think that the Court will find that the case law is near unanimous. I only found one opinion, an older opinion to suggest that it's a moving burden. But the case law is virtually unanimous that the debtor bears the burden of proof on eligibility. And so it must, and so it does in any case where it filed a petition.

If, for example, by way of an absurd proposition the debtor moved to convert to Chapter 9, the Court wouldn't wait for a creditor to come in here and say the debtor is not eligible. The Court would say what the heck are you doing. Prove that you're a municipality. So that's the key now. The debtor must prove that it's eligible.

Your Honor, in my objection I went through the statute at issue here. And if I may approach with a packet,

Your Honor.

THE COURT: Please. Thank you very much.

MR. RUKAVINA: Your Honor, we know that the debtor is a Texas corporation. That's been judicially admitted. We also know that from the consent of shareholders.

Now, Texas statute provides that certain things are waivable and changeable in the articles of incorporation of the bylaws. I wanted to yesterday to introduce the articles and bylaws and the shareholder agreement. Your Honor will recall Mr. Goodman didn't know what those were, so I felt like I could not offer their admission.

But sitting here today the debtor has not presented the Court with its own bylaws and articles, which I would submit is strange to say the least because the issue of eligibility has been placed into question.

But again, going back to the burden of proof, the Court does not have the bylaws or articles before it. Therefore, there is no evidence that Texas statute has been modified or waived. I'll also tell you as an officer of the court I have those documents. I would not be making this argument if there was any language in there changing it, so I don't know if that's evidence or not, but I take my Rule 11 obligations seriously. And I would not be making this argument if I knew that factually it was otherwise.

So Your Honor, we revert to Texas law Section 21.501.

This is interesting. This is a very little-known statute. A corporation must approve a voluntary winding up in accordance with Chapter 11, not Title 11, Chapter 11 -- not a reorganization but a winding up. So Texas law says if a corporation is going to liquidate in Chapter 11, it needs special corporate approval as opposed to a Chapter 7, as opposed to a reorganization.

And that's obvious because the shareholders need to be protected if there's going to be a liquidation. Now, how does a corporation go about doing that? Well, you see here, it talks about the subchapter case. So now we go to the next statute, 21.502.

This is how you approve a winding up, a voluntary winding up in Chapter 11. Option one is all shareholders of the corporation must consent in writing. They haven't. Your Honor knows from Mr. Goodman's testimony that there are other shareholders here. That's part of what I wanted to introduce yesterday. There are other shareholders. We don't know who they are, but Mr. Goodman testified under oath that there are other shareholders than those who signed Exhibit 1.

Two, if the corporation has not commenced a business -- well, two is inapplicable.

Three, the board of directors of a corporation must -- this is must, this is not may -- must adopt a resolution. We don't have that. We do not have a board

resolution. I don't think we had a board before Mr. Nelms. And then that resolution must be approved by the shareholders in accordance with Section 21.503. I'm sure that the Court can see that, Section 21.503.

Section 21.503(b) talks about this meeting of shareholders. Now, I'll concede there need not be a formal meeting of shareholders. But then 21.503(b) says the shareholders must approve the resolution -- so remember, Your Honor, the nonexisting resolution from a nonexistent board of director -- by the affirmative vote required by 21.364.

21.364 is the last statute that I gave Your Honor, and in particular subsection (b). This is a long statute. The Court can certainly read it. I'm not misrepresenting what it says. Section (b), when this vote is required, it requires the affirmative vote of the holders of at least two thirds of the outstanding shares entitled to vote, two thirds, Your Honor.

I didn't spring this today. I didn't spring it yesterday. It's in my objection over the weekend. If the debtor had two thirds, the debtor would have presented evidence of that. The debtor did not.

Both Exhibit 1, it says that it's the majority shareholders, not the supermajority, not 66.7 percent. And Mr. Goodman testified it's 51 percent. There is no evidence that it's 67 percent. I don't know if it is or not. I am not

making the argument -- I have no evidence that it's not. That's why we go back to the burden of proof, Your Honor. It's the debtor's burden to prove eligibility. The debtor knew this was a-coming. The debtor had every opportunity yesterday to present evidence. It did not.

I will not pretend to be a corporate law expert, Your Honor, but I can read the English language, and I've filed plenty of Chapter 11 petitions myself to know where to go looking before I file a Chapter 11. And perhaps, as Mr. Silverstein said -- perhaps this is why we never saw a signed petition by the debtor because no one knew who would even sign it and whether it was authorized. There's consequences for filing -- I don't want to say an unlawful petition, but a petition without the requisite corporate authority.

So take everything else you're going to hear today aside, Your Honor. Let's assume that the debtor has standing. Let's assume that Mr. Seidel's role is irrelevant. This debtor is not eligible under Section 109. As I briefed, corporate governance is a requirement for debtor eligibility under Section 109, in addition to the other things, like you're not a foreign entity, or you're not an insurance company.

706(d) clearly says that you cannot have a conversion where there's no eligibility. So whether the burden of proof is under 706(d) or 109, it doesn't matter. Therefore, even if

the debtor has the absolute right to convert, if they can do it under Rule 9013, if evidence doesn't matter, et cetera, et cetera, we run right into this problem that the debtor does not have the two-thirds-shareholder consent that Texas law requires. Therefore, it is not eligible under 109, therefore 706(d) is triggered, therefore 706(a) is not triggered.

I don't know -- unless I really shouldn't be licensed to practice law for gross stupidity, I don't know what I am missing in the statutes or in the evidence that the debtor is going to tell you today to get around that. And maybe the debtor has something that I'm not aware of. Maybe I should go to remedial corporate school. I hope not, but if the debtor cannot rebut in law or in evidence what I've just told you, the discussion's over, the motion is denied.

The other issues, Your Honor, need to be addressed as well because Mr. Seidel takes his role and takes this case and takes all of his fiduciary duties seriously. Mr. Seidel, upon his appointment, upon the order for relief became the management of the debtor. I understand what Your Honor said yesterday about there being a twenty or thirty-minute gap. I'm not going to make silly arguments that someone did someone wrong because of a twenty or thirty-minute gap.

But the debtor simply no longer is managed by a board of directors. That's in the Weintraub case. And it's also fundamental and elemental. Yes, Ms. Seidel is the

representative of the estate. And yes, we can argue whether 706(a) is a right of a debtor or of an estate. And we can argue whether voting rights are property of an estate under 541(a), which I would submit that they certainly are because the Court looks at it every time we have a cramdown under 1129(b) and Supreme Court precedent that talks about control and voting rights are property of the estate.

But all of that being in the debtor's favor, the fact remains that when the order for relief was entered, pre-petition management loses all role and ability to manage the debtor, to speak for the debtor. The trustee speaks for the debtor. The same as if the debtor was a party in pre-petition litigation outside of this court, it would be inconceivable that the debtor's management would be managing that litigation. So with Mr. --

THE COURT: How --

MR. RUKAVINA: Pardon me, Your Honor.

THE COURT: Let me stop you right there, Mr. Rukavina. I understand what Weintraub says. You know, and obviously, there are a lot of issues, but the Code repeatedly recognizes the distinction between the trustee and the debtor. Okay? If a debtor under 706(a) may convert to Chapter 11, then doesn't that assume that they're in another chapter, that they're in Chapter 7?

MR. RUKAVINA: It does, of course.

THE COURT: So then how can a debtor ever seek to convert if I buy that the Chapter 7 trustee has acceded to all of the rights and management of the debtor?

MR. RUKAVINA: Sure.

THE COURT: Who can ever come in on behalf of the debtor?

MR. RUKAVINA: The trustee can. The trustee, Mr. Seidel -- Your Honor, I'm not be facetious. Mr. Seidel may decide and may argue, and in fact, in other cases I've represented him we got under Chapter 7 the right to operate a business. But he might decide that a Chapter 11 is appropriate.

THE COURT: But he's not the debtor.

MR. RUKAVINA: Your Honor, he makes decisions for the debtor. Let me ask the question a different way. We have this from this Court in In re Statepark Building Group, a case that I argued about fifteen years ago with Judge Hale that went to the Fifth.

What Your Honor -- suppose that there's a state court receivership in place over the debtor, that there's a general receiver appointed. Who gets to decide 706(a) in that case? The question again goes not to whether someone's the debtor or not or the estate. It's who controls, who makes the business decision for a debtor.

If a general receiver is appointed, then that general

receiver makes that decision to the exclusion of management. Similarly here, we don't even know -- there's not even any evidence that anyone authorized this motion to be filed prior to the order for relief, other than Mr. Goodman.

Mr. Goodman testified that he instructed Akerman that this motion be filed some time before. So if the debtor has -- if the debtor exists under 706(a) and pre-petition management controls it, who is that, Your Honor? We've seen Mr. Goodman was a consultant. That's not carte blanche authority. He's not the dictator of the debtor.

And that document, Your Honor, was signed by -- I'm sorry, by a secretary. Nothing wrong with being a secretary, but she doesn't speak for the corporation. We heard that upon his leaving the prior CEO orally told her why don't you --

THE COURT: I do -- I understand your arguments, Mr. Rukavina. I interrupt you because the debtor has a lot to answer for in that regard. Okay?

MR. RUKAVINA: And Your Honor, that's --

THE COURT: the time line of the consultant agreement, to the retention of Mr. Nelms, to the shareholder consent, there's plenty to talk about there. My question is more elementary. It's statutory. There is a definition in the Code of what a debtor is. There's a definition in the Code of what a trustee is. And I recognize the changing of the guard upon a Chapter 7.

What I am trying to understand, and I know that this is in Mr. Langley's papers, and Mr. Silverstein argued something similar as well. And I'll ask the same of them, which is your argument writes 706(a) out of the Code.

MR. RUKAVINA: It doesn't, Your Honor, because 706(a) applies to individual debtors. And again, the Court might find it a rarity, but it's not a facetious argument. The Chapter 7 trustee may decide that he wants to convert the case for various reasons.

But let me go back to the issue that we were just discussing. And I know Your Honor's going to ask Mr. Parham about it at some length. And it also goes for 706(a). A corporation can act only through its vice principals. That's black letter law. Who as of the order for relief -- because after that it's a little different. Who were the vice principals of the debtor? We don't have a director. We don't have an officer.

Again, we have Mr. Goodman. We have his written engagement agreement. To me it is inconceivable that someone who's not a director or an officer has the ability to cause a corporation, of which he's not even a shareholder, to file Chapter 11. That's inconceivable. Certainly, his retention agreement doesn't mention any such authority, even if the secretary could grant that authority. And again, I'm not trying to be facetious or play games or be smart.

THE COURT: No, I don't think you are. I mean, --

MR. RUKAVINA: It's a crazy situation.

THE COURT: You have a good point there.

MR. RUKAVINA: It's a crazy --

THE COURT: As I have a lot of concern with the consultant --

MR. RUKAVINA: It's a crazy situation.

THE COURT: -- agreement to start with, if whether or not the corporation ever validly entered into that. And that is a precursor for everything that happens after that. And I grant you that.

MR. RUKAVINA: And let me finish that -- let me finish the discussion --

THE COURT: Sure.

MR. RUKAVINA: -- with two points that are perhaps best made in the future. I think that what we saw here today -- and this is going to be I think very important for when the trustee or someone investigates D&O claims. What we saw today was a rudderless ship for I don't know how long, but before Mr. Goodman got involved here we have a corporation that may not have had directors for a while, that may not have had officers, that may not have been minding the bank.

I don't want to say too much because I don't want some insurance coverage lawyer two years from now using my words against me. But we see a problem. And I respect Mr.

Goodman trying to fix it. I respect Mr. Nelms trying to fix it. Certainly, the trustee doesn't question the integrity or sincerity of those men, certainly not Mr. Nelms' qualifications. But we'll talk about the beauty contest next time I guess, if the debtor survives today.

But the other point I wanted to make I think also bears mentioning is you have before you substantially all of the largest creditors in this case saying don't convert. Now, that may or may not be an authority, corporate authority issue, but you heard Mr. Goodman say a hundred times yesterday he's aware that fiduciary duties upon insolvency -- and he said this debtor is hopelessly insolvent. He may not have used those exact words. That those fiduciary duties extend to the creditors. Shouldn't the creditors then have under corporate governance some role? The equity -- why should the equity? And that brings me to my final point.

This is a complicated point, Your Honor. But I really ask the Court to bear with me because, again, Mr. Seidel is charged with certain duties. And therefore, he must look at certain things.

Obviously, the automatic stay went into effect the moment that the 303 petition was filed. The case law virtually unanimously goes like this. The automatic stay does not prevent the shareholders of a corporation from convening a meeting to try to change the directors post-petition or in

light of the automatic stay except when they are seeking to control the estate or when they are creditors seeking to enhance their position.

Your Honor, I cite as one of the cases here 619 B.R. 364, In re Gen Canna Global USA, Inc. (2020). And it goes through the case law, and it summarizes the case law. And that is what the vast majority of case law says.

I also cite 2012 WL 1098544, which stands for I would think the unremarkable proposition that where an estate holds interests in other entities those other entities and voting rights are property of the estate.

So here's what we have, Your Honor. Mr. Goodman, he would not admit yesterday to filing this motion for control. I think he was very careful not to admit that word. But all of his testimony confirmed that that's what he and equity want. They want control.

They believe that liquidating through a Chapter 11 is better for the creditors. Let's put aside whether that's true or not. They want to control the liquidation. That's why they brought in their brother. That's why they brought in Mr. Nelms. That's why they're now filing this motion.

And you heard that James Goodman holds more than thirty million dollars of debt. You heard that John Goodman has been trying right or wrong to buy bond debt. Now, he refused to admit that he would have more success doing that in

Chapter 11. I think the Court can see right through that.

So I would submit, Your Honor, all other things being equal, and if Your Honor goes to review the case law which I know she will, you will find that I am right. That the case law says that when shareholders in light of the automatic stay try to change the directors of a company, when they do so because they want control of the estate, then it is a 362(a)(3) violation. Any act to gain possession or control -- control of the estate. And as such, it should be void or voidable.

Your Honor, I have nothing to add. Thank you very much for your time. And I apologize having come in late into this game if I have made any misstatements or offended anyone, like John Goodman yesterday thinking that he was Jonathan.

THE COURT: One question for you, Mr. Rukavina. Did the evidence reflect that the shareholder consent occurred after the order for relief?

MR. RUKAVINA: Yes, Your Honor. That evidence was unambiguous, confirmed by most -- by both Mr. Nelms and Mr. Goodman, who testified that some of the signatures came in after for relief.

THE COURT: Okay.

MR. RUKAVINA: The order for relief was -- I'm going off memory. Let's say 1:30 p.m., the volunteer -- not the volunteer petition. The motion to convert to what I call

Chapter 22 was filed around 5:30 p.m. I'm going off memory. Mr. Nelms testified that they were still gathering signatures, and he unambiguously testified, as did Mr. Goodman, that one or more of those signatures came in after the order for relief.

THE COURT: Thank you very much.

MR. RUKAVINA: Which I would then submit that it's -- that the document was not effective before the order for relief, one, because you don't even have a majority of shareholders at that point. Forget about the supermajority, you didn't even have a majority of shareholders. And the document clearly contemplated I would say as a de facto condition precedent that they all signed. Thank you, Your Honor.

THE COURT: Okay. Thank you very much.

All righty. Mr. Langley, Mr. Silverstein, who would like to go next?

MR. SILVERSTEIN: I'll go next, if that's all right with everyone else. It's Paul Silverstein.

THE COURT: Okay.

MR. SILVERSTEIN: Again, for the record, Paul Silverstein, Hunton Andrews Kurth, for the original petitioning creditors. Can you hear me all right, Your Honor?

THE COURT: I can. Thank you.

MR. SILVERSTEIN: Great. Just before I go into my

closing, and I'm going to try to keep the five minutes that I said I would use.

The answer to your question about 706(a) being written out of the statute is 706(b). 706(b) is where in a corporate context a stockholder, a board member, or some (audio interference) interest, and there's an exception to that that I'll get to later -- when there's true insolvency, that's where that comes in. So the remedy under 706 exists. And nothing is being written out under 706(a).

But let me now just get to the substance of our argument on this point. If there is any confusion about whether Mr. Nelms or Mr. -- or John Goodman (audio interference) 706(a) motion on behalf of the debtor, it stems from the statute, it was the Bankruptcy Code, needing to accommodate both individual debtors and corporate debtors.

To clarify this, we need to go back to the text in the statute. Section 706(a) says, "The debtor may convert a case under this chapter." Congress knows how to distinguish between debtor and trustee. You see it all over the Code. So when Section 706(a) says, "The debtor," it means the debtor. The question here is who is authorized to act for the debtor.

In a Chapter 7 case, you have two separate entities, the trustee and the debtor. The Bankruptcy Code vests all of the debtor's interest and property as of the commencement of eh case solely in the trustee. The trustee then administers

those assets. But the debtor still exists and goes on existing.

This raises the question of who can act for the debtor in the bankruptcy case. If the debtor is an individual, individual can show up at hearings. They can file motions. They can object to other motions. They can file a motion to convert the case because they are the debtor.

Corporations are different. Unlike -- they're different than individual debtors. Unlike an individual, a corporation cannot (audio interference) itself. A corporation has to act through those that are legally vested with the authority to act for the corporation.

You still have the two separate entities, the trustee and the debtor. And the trustee acts as the representative of the estate, but the debtor is still there, still a corporate entity. The question is who has the authority after an order for relief under Chapter 11 and the appointment of a trustee, to act on behalf of the corporate entity?

The Supreme Court -- U.S. Supreme Court answered the question Community Futures Trading Commission v. Weintraub. It's the trustee. As the Supreme Court said in Weintraub, "Corporate officers are completely ousted once a trustee has been appointed."

And this makes perfect sense if you consider the different narratives. The previous management of a

corporation in a Chapter 7 case can't go out and incur debt on behalf of the corporation or enter into a contract on behalf of the corporation. Nor could they continue operating the business of the debtor post-petition.

In a Chapter 7 case, only the trustee is entitled to operate the business and only upon order of the court under Section 721 of the Code. That's because as the Supreme Court has said, the Chapter 7 trustee completely ousts the former management when it comes to a Chapter 7 debtor.

And again, this is not to say that the debtor's former management or even stockholders have no recourse whatsoever if they think the case belongs in Chapter 11. They're entitled to move to convert under Section 706(b) with, again, I believe one real exception when the corporation is plainly insolvent, as Mr. Goodman conceded yesterday.

There is an interesting Second Circuit case that I used to think was a very well-known case, but it's a 1986 Second Circuit case called In re Johns-Manville Corporation at 801 F.2d 60, where in the context of stockholders seeking to change the board of directors by calling an annual meeting under applicable corporate law, the Second Circuit suggested that stockholders of an insolvent corporation where there's no possible recovery for stockholders were not even parties-in-interest. And I say that because 706(b) reversed the parties-in-interest. Second Circuit said, "We note that if Manville

were determined to be insolvent so that shareholders lack equity in the corporation, denial of the right to call a stockholders meeting would likely be proper because the shareholders would no longer be real parties-in-interest."

I think that's really an overriding issue here because you have Mr. Goodman who apparently is not even a shareholder purporting to act on behalf of the corporation because he's just trying to save things because he's a good guy. I mean, a lot of sarcasm in that statement, Your Honor.

In any event, so once you have a Chapter 7 case, old management is out. The trustee is in, as in the present case. But even assuming that a duly authorized pre-petition agent could act for a corporate debtor in a Chapter 7 case, which we submit it can't, the evidence we heard and saw yesterday makes it clear or indicates clearly that we don't even have that here.

Goodman Networks is a Texas for-profit corporation. Under the Texas Business Organizations Code, the board of directors exercises all powers of the corporation and directs the management of the business and affairs of the corporation. This is crystal clear in Section 21.401 of the Texas Business Organizations Code, and it is standard typical corporate law in states through the country.

It ensures that the corporation has individuals with fiduciary responsibilities to the organization and its

stakeholders operating the business. It's a very simply concept.

The testimony and evidence makes clear that throughout much if not all of 2022 Goodman Networks had no board of directors. Howard Konicov, as the debtor's 30(b)(6) corporate representative, testified he never heard of anyone being on a board of Goodman Networks and never met with a purported board of Goodman Networks. This is in the Konicov deposition starting at page 51.

Mr. Nelms testified that when he was purportedly appointment to the board on December 12, he became the sole director. If Mr. Nelms became the sole director on or about December 12th, that means the company had no board and indeed no officers at all going back until James Frinzi's resignation in September of 2022.

John Goodman could not identify any directors of Goodman Networks and confirmed in his testimony that the company had no officers after James Frinzi resigned in September of 2022, when he was reviewing the list of directors and officers that was produced to him -- that was produced to parties-in-interest on discovery.

If there was no board and no officer, there was no one with actual authority to act on behalf of the debtor when it filed a motion to dismiss the voluntary petition, and when it objected to the joinders in fact. John Goodman was

purportedly appointed as a consultant in October of 2022. His appointment to that position is itself highly suspect.

We heard that the person who purportedly executed his consulting agreement on behalf of the debtor was James Frinzi's so-called chief (audio interference), even though Frinzi had left the company one month prior. There was no board or officer (audio interference) retention as a consultant. Nor have we seen a resolution or written consent from the stockholders authorizing his appointment.

Indeed, the debtor presented no evidence to establish how John Goodman -- John Goodman's consulting agreement was approved. And we question whether any such approval would be valid from a corporate governance perspective.

A consultant under Texas law has no power to exercise full authority on behalf of a corporation. That power is vested in the board under Texas corporate law. There's no provision of Texas corporate law that allows the family, so to speak, to call upon John Goodman and say, hey, come fix this. I mean, that's essentially what the testimony was.

If they wanted him to exercise corporate authority on behalf of the corporation, they could have done that in compliance with Texas law, but they didn't. They created the consultant's role rather than appointing him to the board or making him an officer of the company. And I think as Your Honor will recall from the testimony from John Goodman, it

appears that when everything hit the fan here, there was -- everybody just skipped town in light of the sixty-odd-million dollars that was stolen, for lack of a better word, from the company.

No board, no officers, there was nothing. If John Goodman never had the requisite authority to act for the debtor, then the order for relief in the involuntary should have been entered long ago, as none of the objections to joinders or motions to dismiss were proper here. We think they weren't proper.

The debtor's shareholders, who are not real parties-in-interest, given the debtor's utter insolvency, should not be permitted to purport to remedy this at this late hour, four months into the case, by appointing Mr. Nelms in order to avoid a trustee, as the documents reflect, or stave off or delay the Chapter 7 and the likely litigation against the Goodmans that is to come.

So just in conclusion and I think I'm up to the five minutes, hopefully not longer than that; there's no corporate authority for this motion. And I think it's really -- it's not -- I think it really is as simple as that when you cut though all the noise here. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Silverstein. I think you doubled your time estimate, so I will disregard the second half of your argument.

MR. SILVERSTEIN: I lost the bet I guess. I didn't realize. I apologize.

THE COURT: I'm kidding. I'm kidding of course. And again, I certainly do understand. I understand both the trustee's and the original petitioning creditors' authority arguments. And that is something that the debtor certainly has to answer for.

I have -- and again, corporate authority aside, but if I take Weintraub to basically write in to the Code the fact that either A, that 706(a) means individual debtor, which it doesn't say. It doesn't say -- it says that in 523. It says that in 362(k). For example, they talk about individuals. 706 does not do that. It just talks about a debtor.

And where I struggle is I don't think that anyone brought it to me, but I did thirty minutes of research. And I came across no less than seven examples of nonindividual cases in which the debtor was contesting or seeking to convert from seven to eleven. And there's certainly the possibility that all of those bankruptcy courts and district courts got it wrong, and that this argument wasn't raised. I will grant you that, but it seems to me that there has to be some opportunity for the debtor to seek to convert under 706. We've had a lot of --

MR. SILVERSTEIN: 706(b).

THE COURT: But it --

MR. SILVERSTEIN: 706(b).

THE COURT: But in your argument, Mr. Silverstein, you said that those were the management, those were somebody else other than the debtor. And again, corporate authority aside, we can talk about corporate authority and things of that nature, but I don't understand how the debtor -- what you're arguing is the debtor ceases to exist post-Chapter 7.

MR. SILVERSTEIN: No, I'm not. I'm not because -- not, I'm not. What I'm arguing is that the debtor -- a corporate debtor can only act through its authorized representatives such as its board and its officers.

THE COURT: Again, so corporate authority --

MR. SILVERSTEIN: That's what I'm -- that's --

THE COURT: -- I'm with you on that argument. I understand that. And as I've said, I've heard lots of troubling things in the evidence on that point yesterday. But if you're saying that all corporate authority went to the Chapter 7 trustee and thus the debtor cannot act, that's where I'm not yet convinced. And I'll look through the cases.

MR. SILVERSTEIN: Okay. And this is not -- this is not a situation where -- I know at the very beginning -- I think it might have been at the status conference, Your Honor made a comment about the practice when an involuntary Chapter 7 is filed and a debtor -- and pre-order for relief the debtor immediately converts the case to Chapter 11 or files a Chapter

11. And it sort of moots effectively the involuntary. That's what we see most of the time.

But this is not that. This is a debtor who for four months has been fighting an involuntary petition and doing all sorts of things including paying 450,000 dollars to John Goodman who's out there trying to buy some bonds so he can make some money, among other things, and basically stalling discovery. And this whole concept of converting the case I think came up -- and someone will correct me as they usually do, but I think it first came up when either James Goodman or Mr. Frinzi were trying to avoid being deposed.

They said ah, we're going to convert this case. And that was several -- whatever that was, and it's just a ruse. It's a ruse here. And I understand the theoretical issue, but I think the theoretical issue is solved when you look at 706(a) and 706(b) together. And that's really all I can say about that. The Code is not perfect. I can point you to many provisions where I can conjure up something that doesn't make sense.

But it doesn't mean that it really doesn't make sense because here I think it clearly does when we're dealing with the facts of this case. Which when you look at them are fairly egregious, when you really think about it in terms of what happened here. That's really all I've got.

THE COURT: Okay. Thank you, Mr. Silverstein.

MR. SILVERSTEIN: Unless Your Honor has anything.

THE COURT: And the record will reflect that you said that Congress wasn't perfect, not me. All righty. Well, thank you very much, Mr. Silverstein.

Mr. Langley.

MR. LANGLEY: Good morning, Your Honor.

THE COURT: Good morning.

MR. LANGLEY: And let me frame it this way. There are two issues on authority to file. I think one of them is the federal issue that we've been kind of debating back and forth day, and the second one is a state law issue where, if you assume that the federal law issue doesn't apply, did they have state law authority to get to where they are.

And I think it's probably more helpful to start with the state-law-authority one. And let me cite you to Franchise Services of North America. That's 891 F.3rd 198. That's a 2018 Fifth Circuit decision. It was cited in the trustee's brief. And it says a corporation cannot act on its own. It can act only if authorized by appropriate agents.

And so it continues if the petitioners lack authorization under state law, the bankruptcy court has no alternate but to dismiss the petition. And it's that citing the Supreme Court precedent Price v. Gurney. And then it continues, "It is not enough that those who seek to speak for the corporation may have the right to obtain that authority."

Rather they must have it at the time of filing. Absent a duly authorized petition, the bankruptcy court has no power to shift management of a corporation from one group to another, to settle intercompany disputes, and to adjust intercorporate claims.

And that case went on to hold that although the board of directors had approved that filing for a bankruptcy debtor to file a Chapter 11 case, there was a minority shareholder that had a veto right that did not exercise that veto right, and therefore there wasn't authority to file that individual Chapter 11 -- or excuse me, the corporate Chapter 11 case.

And we would suggest the facts here are pretty remarkable in that there is no board action here. And as my two co-counsels have already identified, the Texas Bus Org Code at 21.401 requires a corporation to manage its business affairs through a board of directors.

So what do we need to see from an authority to file standpoint? We need a board resolution. And we don't have that here. Nothing is in the record about a board resolution. We've seen in Exhibit 5 that FedEx introduced the deposition testimony that Mr. Frinzi very -- or not Mr. Frinzi but Mr. Konicov, on behalf of the debtor as the 30(b)(6) testified, there is no board after James Frinzi and James Goodman were gone.

Furthermore, we saw in FedEx's interrogatories

responses at 15 -- we saw that there were no board members identified for this entity. And then in the testimony of Mr. Nelms and Mr. Goodman, neither one of those could identify any officers or board members related to this.

So we think as the state law is very conclusive here, there is no authority to file. And we recognize that the debtor may try to argue that shareholders can rectify or do those type of things in place of a board, but that's not exactly right. And so if you looked at Texas Bus. Org. Code 21-101 (sic), in the unique situation which is unprecedented here because there hasn't been an elimination of the board of directors, but if the board of directors were eliminated by a resolution of the shareholders, that has to be done in one forum and one forum only. And that is under subsection (b) again of Texas Bus. Org. 21-101 (sic), which requires a shareholder's agreement -- I'm quoting now, "authorized by this section must be continued in a certificate of formation of bylaws, if approved by" -- and this is the important part -- "all of the shareholders at the time of the agreement."

All of the shareholders have to do this. So the idea that only the Goodmans as fifty one percent-majority shareholders could come in and authorize this type of action, that's not appropriate. And the way -- and I'm going to get a little corny here, but the way I think of this is kind of an

illusion to a Christmas time movie. And I think of the Will Ferrell Elf, where he hears, "Santa. I know him. I know him." I know Judge Nelms. Right? We know who Judge Nelms is.

But then you go up to him and you say wait a second. Pull on the beard; you're not Judge Nelms. You're John Goodman. How did you get here? And you say well, I have a consulting agreement. Well, how'd you have a consulting agreement?

And he points to the person next him, and he says that person in the green hat, that Sandra Sondrup (sic) is my administrative assistant that authorized my consulting agreement, which in effect says that he has no company oversight. I would ask the Court to spend considerable time looking at that consulting agreement and say it doesn't raise red flags that a consultant can be hired to run a multi-million-dollar business or what was a multi-million-dollar business and do so without any governance authority from the board or any governance authority from shareholders. That is remarkable. It's shocks the conscience remarkable.

And I would ask that you spend some time looking at that. That is Exhibit 8 that FedEx introduced. And only through that consulting agreement was Mr. Nelms' engagement, the Debtor Exhibit 3 executed. So at this point, we are literally relying on Ms. Sondra as the chief of staff, which

Mr. Konicov in the deposition transcript at Exhibit 5 of FedEx admitted was an administrative assistant to Mr. Frinzi, who is no longer there.

This company, this motion to convert all originated from a chief of staff administrative assistant acting on behalf of a company. And that is not valid corporate formality. That is simple -- under the Franchise Services of North America case in the Fifth Circuit, this Court has -- again, I will cite. This Court has no alternate but to dismiss the petition, here the motion to convert.

So we think the state law question is overwhelmingly against the debtor here. We think that this has to be done under state law. It wasn't done under state law, and that is conclusive. Moving to the federal question.

THE COURT: Mr. Langley.

MR. LANGLEY: Which again --

THE COURT: Mr. Langley --

MR. LANGLEY: Sure.

THE COURT: Before you go on, I've flipped a few times to find the full citation for Franchise Services of North America. I think that I wrote down 891 F.3d 198. Is that correct?

MR. LANGLEY: That's correct, yes, Your Honor.

THE COURT: Okay. Thank you very much. Please proceed.

MR. LANGLEY: And to be fairly candid, I know that case well because I was the debtor's attorney that got slapped on the hand for filing it. So I have been in Mr. Parham's shoes before. It's uncomfortable but you live to move on.

THE COURT: Do as I say not as I do.

MR. LANGLEY: That's exactly right. So I think the state law question based on the evidence we heard, it's obviously a more difficult -- because it's an evidentiary question here. But I think it's very conclusive based on the record that you saw that you can decide that without even getting to this federal question.

But if you do get to the federal question that you've been wrestling with today, I would suggest this, that 706(b) does authorize only the debtor to file that type of motion to convert. And I recognize that you say he'll be written out of the Code if the trustee was the only one. But I actually can cite you a case in the Northern District of Texas where the trustee did move to convert under 706(a).

And that's the Acis Cap Management, L.P. case, 604 B.R. 484. And that one's pretty fresh. That's a 2019 decision of the bankruptcy court that was affirmed on appeal. And that came back where the trustee -- after being put into a Chapter 7, the debtor was determined to need to be in a Chapter 11 because it had a business to operate and it needed to reorganize.

So there was a time when a chapter 7 trustee will do what's right and put that company into a Chapter 11. So is it rare? Yes. I would suggest it is very rare. But other than that rarity with a corporate debtor, it's not rare for an individual.

An individual should be able to because they have personal rights. And I think we go back to the Weintraub case, and I think the reason all counsel keeps pointing back to it is it's so important because they talked about a very personal right. And that's the privilege that every person has related to attorney-client privilege. That's a very personal right. That's as personal of a right as moving under 706 to convert. And that personal right was determined by the United States Supreme Court to be held only by the trustee at that point.

And so while I recognize yes, there's a desire to provide some type of sympathy to a debtor that's involuntarily forced into Chapter 7, but 706(a) is not that sympathy. And I do think the Weintraub case, which has again been applied to both corporations in the Weintraub and partnerships in the Fifth Circuit through the Campbell case, those are personal rights that are lost.

The debtor is not the trustee. I agree with Mr. Silverstein on that, but here, the debtor can only act through the trustee. And we know that through Rule 6009. Again, I

pointed to that yesterday. I would ask again that the Court spend some time looking at the statutory -- not the statutory language, but the rule's text. And it very clearly says the trustee may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor.

That's not the estate. That's 323. And then the second part of that sentence does talk about prosecute any action or proceeding in behalf of the estate before any tribunal. So it's twofold. The trustee has two rights. They administer the estate and represent the estate, but the trustee also carries on and conducts the debtor's business if that's what it's to do.

And that's very clear from Rule 6009. And I think there's no counter-response to Rule 6009. The only thing I heard is as a counter-response in opening statements was Section 341(d), which talks about a debtor appearing at the meeting of creditors. The argument was how does a debtor appear at the meeting of creditors if it's the trustee. And that's actually a pretty fair point.

Except when you look at 341(d). 341(d) is specific to individuals. It talks about discharge. It talks about reaffirmation agreements. We all know as regular practitioners in bankruptcy court that a corporation doesn't receive a discharge in Chapter 7.

So all those issues under 341(d) are just

inapplicable to a corporation. So Congress didn't screw up. It simply provided a statute that's irrelevant to a corporate debtor that doesn't receive a discharge or need to reaffirm any agreements.

We think that the federal rule that has been adopted by this point by three different panels of court of appeals, the Tenth Circuit in C.W. Mining, the Tenth Circuit in Bear Creek, and the Fourth Circuit the -- I apologize. I've got it here somewhere, the Public-Sector Solutions case.

THE COURT: Right.

MR. LANGLEY: I don't have that in my brief, so if you need the citation that's 602 F.App'x 929.

THE COURT: You gave that one to me yesterday.

MR. LANGLEY: You really have to -- okay. Yeah, you really have to go to the underlying memorandum decision from the district court to get to how that was decided because it was a pretty much summary affirmance. But at this point, we've seen now nine different court of appeals judges hold that a debtor in a Chapter 7 case is the trustee.

And I think Mr. Silverstein was also right, like what is the sympathetic situation? What if a debtor is placed in an involuntary Chapter 7 and really should be in a Chapter 11, but we have a hardheaded trustee that only wants to keep it in Chapter 7? The answer to that is 706(b). And that's where any party-in-interest including debtor's former management can

move and show cause to say hey, this is not appropriately a Chapter 7 case. I know the petitioning creditors want it here. I know that they thought it was a good place for it to be. But let me demonstrate cause and why this should be a Chapter 11 case and show why it can be reorganized and why it's not hopelessly insolvent.

Yesterday, we heard testimony from Mr. Goodman that he thinks his business can reorganize. He had no evidence for that. There are no business assets. There hasn't been business assets. There hasn't been a board of directors. There hasn't been anybody other than an administrative assistant acting for this company at certain points in time.

This is a remarkable case. It is the extraordinary exception. It is the atypical case for a corporate debtor to come in here and not have any governance. That is remarkable.

And I think the evidence that was put forward yesterday demonstrates under state law they couldn't file this motion to convert. And I think that issue's even moot because federal law has been decided by three different panels. Nine different court of appeals judges have all held that.

And I recognize that prior to Marrama there were cases out there that did hold, based on 706(a), that a debtor could come in and convert to Chapter 11 in that situation. The debtor cited one in their brief. That was the -- if I can get to it. I don't have it here, but I think it was like

Premier or something, along that line.

THE COURT: Yes.

MR. LANGLEY: That they cited.

THE COURT: Yes.

MR. LANGLEY: Eastern District of Texas case.

THE COURT: Yes.

MR. LANGLEY: But if you look real closely at that case, it made the same error that the debtor did in the motion to convert saying that there's absolutely right to convert. The Marrama conclusively overheld.

So the idea of the debtor's case there being support for its position is citing to a Nebraska Bankruptcy Court that was pre-Marrama and had an absolute right. If there is no absolute right to convert, 706(a) doesn't make any sense for the purpose of where we are here today and the purpose of that case.

And so we would suggest that Marrama clearly held there is no absolute right to convert. So this is a pretty easy question then. There always have to be some type of analysis whether there is cause to convert. Either it's the debtor's burden under 706(b), or it's the opposing party's burden under 706(a).

Your Honor's going to hear that at a later date if she -- if you don't decide to resolve this on standing grounds. We think you should. But we think that the evidence

that you've already seen is going to make it even more overwhelming once we have time to get in and see bank statements and all the other stuff that was done during this period.

We don't think there's a need for all that discovery. It's going to be expensive on all our parties to do that. We think the evidence clearly states there's no state law authority here for this motion to convert. We think that federal law is conclusive that there is no federal authority here because the trustee is the only party, after its appointment and the order for relief, to do that.

Again, the debtor's former management is not out of luck. They can move. Mr. Parham is fully capable of moving on behalf of debtor's former management under 706(b) and demonstrating cause, again, that this is not hopelessly insolvent and that there is reorganization. We just don't think it's appropriate that the opposing creditors are forced -- even the trustee are forced to carry that burden under 706(a).

And with that, Your Honor, I will conclude, unless you have any further questions.

THE COURT: Thank you, Mr. Langley. You're an incredibly skilled oralist. I'm not sure if you ever breathed during that presentation. So I do have a few questions for you. You argue with amazing rapidity. So here are my

questions for you.

You cited to me 341(d). Looking at 341(d)(2), it says prior to the conclusion of the meeting of creditors, the trustee shall orally examine the debtor to ensure that the debtor in a case under Chapter 11 of this title is aware of -- number (2) the debtor's ability to file a petition under a different chapter of this title. So corporate authority aside because we will talk about corporate authority a great deal. Or shall I say the debtor and I will talk about corporate authority a great deal.

How is that consistent with your argument that after the order for relief is entered and a Chapter 7 is filed that the debtor cannot move to convert and cannot seek to file under a new chapter?

MR. LANGLEY: So I would turn to 341(d)(1) and suggest that that -- excuse me, (d)(2) the ability to file under a different chapter is not related to the context we're in. That's related to a Chapter 7 case where you have a means test and you have to go through the means test and determine whether they should more appropriately be in a Chapter 13 case.

So I think that's what that is contemplating. It's not really the U.S. Trustee or the Chapter 7 trustee trying to figure out whether this debtor should have been put in Chapter 11 or Chapter 7 case. That could be done through other means.

Really, the purpose Congress was intending through this provision, again, was it's something that has to occur related to the meeting of creditors is that means test to figure out whether they are even eligible for Chapter 7. So I think it's more focused on whether there's eligibility to begin with for the Chapter 7 case, not trying to figure out if there's another more beneficial chapter that might be voluntarily sought after.

And so that I think is just sort of a distraction. I don't think it gets to the fact that this estate under 323 is very clearly administered by the debtor. I don't think that -- I don't know how you read Rule 6009 any differently than to say that there's two obligations of the trustee. One is on behalf of the debtor, and one is on behalf of the estate.

Again, I would point you back to the Tenth Circuit case.

THE COURT: My reading of 6009 -- my reading of 6009 basically is that its applicability is to pending actions when the case is filed. So the debtor can be in a pending action in a variety of instances when a case is filed. And this says that the trustee may enter an appearance and defend any pending action by or against the debtor. That's where the trustee can step on. That's what this means.

MR. LANGLEY: Your Honor, and that may be true, but

doesn't that ask the next question? If the trustee can take over pre-petition litigation where clearly there was authorization on behalf of the former management to act, doesn't that very conclusively evidence that after the fact that would be the same situation?

Why could the debtor take over clearly authorized actions outside of bankruptcy but not take over unauthorized actions within the bankruptcy? That's -- it seems to suggest the same rule for both positions.

THE COURT: Right. And again, not arguing with you on corporate authority. Questioning your proposition that this debtor may not seek to convert under 706(a), again, because that right is only in the hands of the trustee. And again, in the Acis case, I know that the trustee -- the Chapter 7 trustee moved to convert that case. But I don't recall any portion of that decision saying that the debtor could not have so moved.

MR. LANGLEY: You're correct. That wasn't ever put at issue in that case. And I don't know the cases that you have otherwise read, but I'm not sure this has been put forward in any of those other cases. But what I do know --

THE COURT: Well, actually, a lot of them you've cited.

MR. LANGLEY: -- is if --

THE COURT: Interestingly enough, a lot of them you

actually cited, Mr. Langley, because -- and let me -- I'll get you there. That's not where I found them, but when I was just flipping through your brief looking for that cite, I just saw them. I thought that was interesting.

So at footnote 2, you cite the Mercury Data decision, the George Love decision, the Broad Creek Edgewater decision. I think in your brief you also cite, if I'm not mistaken, Euro-American decision. Let's see, you also --

MR. LANGLEY: Yes, Your Honor. And let me address --

THE COURT: And there --

MR. LANGLEY: Let me address those.

THE COURT: But there are a variety of decisions that also add to that, Breakwell, which you also cited. And there's at least one or two others including FMO Associates II, which is an Eastern District of New York decision at 402 B.R. 546

The long story short is that each of these -- in each of these cases, there was an involuntary, and the bankruptcy court allowed the debtor to be heard on whether or not that debtor should convert to another chapter. Again, corporate authority aside, in each of those cases -- and Judge Clark said the same thing in Premier General Holdings, which I do believe technically was post-Marrama because Marrama is 2007 and Judge Clark's decision in Premier General Holdings was Western District of Texas 2010.

So in each of these cases -- in fact, Judge Clark -- I'll read to you what he says. He says, "What is more, even if an order for relief is entered on a petitioning creditor's involuntary Chapter 7 petition, the debtor has a near unbridled right to convert to Chapter 11."

I grant you Marrama says no absolute right and gives the circumstances. He says, "The House Report observes that 'the policy of the provision is that a debtor should always be given the opportunity to repay his debts...' Not surprisingly, the Rules contemplate that, while a conversion under 706 is accomplished by motion, it is not a contested matter, and a court may rule on a motion without a hearing.

"The debtor's choice of chapter thus ought to be honored, even if that choice is expressed as a voluntary petition filed after petitioning creditors have filed an involuntary" -- and then he quotes the Nebraska decision that you cited.

But he says -- let's see -- "There is little practical reason to deny a debtor, the subject of an involuntary, the preference it has expressed for a given chapter, whether by the filing of a motion to convert or by the filing of a voluntary petition under a given chapter in the face of an involuntary. There is every reason, to the contrary, to honor that choice, given the intentions of Congress expressed in both the structure of the Code and the

legislative history to the Code."

So again, we all agree that Marrama applies. Supreme Court wins every single time. We can agree upon that. But what I'm saying is that this case and at least six other bankruptcy cases that I came to within thirty minutes all say a corporate debtor has the right to try.

Now, again, corporate authority aside, everything that we've talked about with the Texas statutes, everything we've talked about with the issues with the consulting agreement, the shareholder agreement, et cetera, those may carry the day. But I am struggling mightily with not giving a debtor with proper corporate authority the ability to seek to convert.

MR. LANGLEY: Yes, Your Honor. And let me briefly address some of the cases you cited. So the George Love case was pre-Marrama. The Broad Creek Edgewater was pre-Marrama. The Woodruff case -- or excuse me, the -- you cited another case that wasn't post-Marrama. I don't know the specifics on that. The Euro American Lodging, again was pre-Marrama. I believe most of the authority you cited was all pre-Marrama. And that gets back to this absolute right.

If there's an absolute right to convert, it does seem like a different world that we're in than we are today with Marrama. If the debtor has a absolute right to convert --

THE COURT: Do I have the wrong date of the Marrama

decision? The Marrama decision came down -- am I incorrect it was February 2007?

MR. LANGLEY: I believe it was 2007. That's correct.

THE COURT: And George Love is March --

MR. LANGLEY: Those other cases --

THE COURT: -- 2007, Broad Creek is July 2007, Euro-American is April 2007, Mercury Data is 2018, FMO Associates II is 2009, Eugene Alexander, Inc. -- well, that's way early, and Breakwell's 2010. Am I missing something?

MR. LANGLEY: Your Honor, and again, I'm not prepared to go through the specifics but those all are decided right at or around the time of Marrama then. And I think, you know, the old saying is old habits die slow. They die hard. And I think the Premier case that you cited in the Eastern District of Texas is that type of example where he's still citing back to pre-Marrama decisions. He's still relying on pre-Marrama practice.

And I don't think there's any statutory basis for that. And I turn you again -- I think those Tenth Circuit cases are extraordinarily well reasoned. And I cite the Bear Creek Trail case now. The Bankruptcy Code makes no provision within the structure of Chapter 7 for former management to appear in the proceeding and attempt to assert a separate interest on behalf of the debtor. I mean --

THE COURT: And so am I correct --

MR. LANGLEY: -- there could not be a more conclusive statement.

THE COURT: Am I correct that Bear Creek -- because I did have an opportunity to sit with C.W. Mining for quite a bit, given your heavy reliance upon it in your papers. C.W. Mining is an appellate decision dealing with a person aggrieved test, which is an appellate policy. Okay? And I'm quoting from C.W. Mining.

But this circuit has adopted the rule that appellate review of a bankruptcy court order is limited to persons aggrieved by that order. To qualify as a person aggrieved, a person's rights or interests must be directly and adversely affected pecuniarily by the decree or order of the bankruptcy court. Accordingly, unless the estate is solvent and an excess will eventually go to the debtor, or unless the matter involves rights unique to the debtor, the debtor is not a party aggrieved by orders affecting the administration of the bankruptcy estate.

That's an appellate policy. How does that affect whether the debtor can act within the bankruptcy? Whether or not the debtor is going to have the authority to appeal any order of this bankruptcy court, I am sure that the creditors will -- creditors will beat the debtor over the head with C.W. Mining. But how does that affect what's going on inside the bankruptcy court?

MR. LANGLEY: Yes, Your Honor. If you look at C.W. Mining, it's a little bit more intricate than that. That was the question presented, whether there was person aggrieved standing for the debtor to so move and appeal.

But what the Tenth Circuit did is it actually backed away from that question and said no, no, we're going to address a different question. And that's does the person that's here even have authority to make the appeal. And that's what they decided. It wasn't a standing question they decided. It was an authority question. And they said no.

THE COURT: Standing on appeal.

MR. LANGLEY: This has to -- I'm sorry?

THE COURT: Standing on appeal, no?

MR. LANGLEY: No, Your Honor. That is not what was decided. It was an authority question not a standing question that ended up being decided in that case. And the authority question was does the debtor even get -- is the debtor even represented here. And the answer was no because it wasn't the Chapter 7 trustee, and so they dismissed it because the debtor -- the purported debtor hadn't filed the motion. That's different than standing whether the debtor itself can appeal.

And so that's where I think we've got to focus on it, and the C.W. Mining case makes that very clear distinction in its later findings is we aren't saying the debtor can't

appeal. It can appeal. But the debtor can't appeal through the purported authority of its former management because, at the time of an order for relief and the appointment of a Chapter 7 trustee, there no longer is authority in that former management because they have been completed ousted under the Weintraub decision and placed in the hands of a trustee.

So I'm squibbling on a small technicality, but I think it's an important technicality that the C.W. Mining case did not decide standing. It decided the authority question that's at issue. And that's where I think the case is the exact same situation.

We aren't arguing that the debtor can move under 706(a). It can. There is standing for a debtor to move under 706(a). The question is who has that authority. That's a different question than standing. And the authority here is clearly vested in the trustee. And it clearly was not vested in whoever purported to act on behalf of the debtor here.

And so that's the distinction I think that's hard to make but it is the distinction we're trying to make is this is not a standing under 706(a). There is standing by the debtor under 706(a), but who is the debtor? An inanimate objection cannot act on its own. It has to authorize -- act through authorized agents. That's the FSNA case. And we know that only authorized agent after filing of a Chapter 7 order for relief is the trustee, and that's the position we're taking.

Again, it is a technical, it is a legal position. It is not an easy decision. It involves corporate law and bankruptcy law, and they often don't intermingle very easily. But I think that's why C.W. Mining, Bear Creek were decided to well is I think they actually did blend those two areas really well together.

THE COURT: So essentially -- so obviously, C.W. Mining is in the instance of a conversion from an 11 to a 7. Right? And so the Tenth Circuit says essentially it was the debtor's obligation to seek to appeal before the Chapter 7 trustee was appointed.

MR. LANGLEY: So the facts -- the facts in CWR that an involuntary 11 was filed and immediately there was a motion to convert to 7 that was granted, and the debtor tried to challenge the involuntary bankruptcy on appeal. And so that was the issue that was brought up.

And the position was prior to the conversion when it was a Chapter 11 they probably could have challenged that on appeal. But after the Chapter 7 trustee was appointed, there was a complete ouster of that former chapter's management. Therefore, the involuntary could no longer be challenged. That's essentially what we're suggesting is the position here. It's on appellate standing issue, but it's an authority to file question that would apply in that case in C.W. Mining and in the same motion to convert that we have here.

And you see -- and I apologize, I don't have the exact cites, but it's later on in that opinion. I think it's section 3 that talks about debtor's management.

THE COURT: It's section --

MR. LANGLEY: And it goes through that analysis.

THE COURT: Yeah. I have it. It's right above section 3. Right.

MR. LANGLEY: Yeah.

THE COURT: Oh, I see there's a 3 subsection as well. Yes, I got you. Under those facts, I see the nuance where the court is basically saying you had an opportunity -- essentially, the debtor had an opportunity during the case, and it didn't appeal that -- it didn't appeal that order. It says the corporate -- it's again the corporate managers, which is a little different than what we have here, but it says the corporate managers failed to appeal the conversion to Chapter 7.

Okay. Well, like you said, I will sit with it for some time. But I certainly appreciate your arguments, Mr. Langley. Thank you very much.

MR. LANGLEY: Thank you, Your Honor.

Ms. Sixkiller.

MS. SIXKILLER: Yes, Your Honor. In the interest of brevity and keeping with my five-minute maximum that I promised, ARRIS has nothing to add to the closing statements

that have already been presented by the interim trustee's proposed counsel and the other creditors.

THE COURT: Okay. Thank you very much, Ms. Sixkiller.

MS. SIXKILLER: You're welcome.

THE COURT: Mr. Schaffer, anything to add today?

MR. SCHAFFER: Your Honor, true to my word, I have nothing do add.

THE COURT: Okay. Thank you very much, Mr. Schaffer.

MR. RUKAVINA: Your Honor, before Mr. Parham gets the last word, may I have a minute to address a question that you had for Mr. Silverstein?

THE COURT: Okay.

MR. RUKAVINA: Thank you. The Court asked quite rightfully that why doesn't 706(a) say the individual debtor because the Code does in certain instances say individual debtor. But the Court I don't think would be surprised because I know the Court knows Chapter 12 and 13 very well; those don't say individual debtor. Those say debtor. The debtor shall file a plan. The debtor may move to convert.

It's inconceivable that the word of the debtor in Chapters 12 and 13 would refer to a corporation. Chapter 9 talks about the debtor -- debtor, debtor, debtor. It's inconceivable that a human being would be a Chapter 9 debtor.

So we need to look at the context. In other words,

Congress, as wise and precise as it may be sometimes says duh, of course we mean individual debtor in Chapter 13 because that's all it can be. So let's go back to 706(a), and before we read 706(a), Your Honor, there are three possibilities. The debtor can be only an individual debtor, the debtor can be only a corporate debtor, or the debtor may be both.

706(a) says the debtor may convert a case under this chapter to a case under Chapter 11, 12, or 13. The only possible definition as between those three that works in each of those is an individual debtor because a corporate debtor can never be a debtor under 12 or 13. So using logic, trying to avoid ambiguity, I would urge -- and I would agree with Mr. Silverstein that only an individual debtor has a right under 706(a).

And as I've put in my objection, this motion really is filed under 706(b), which is a different standard. So I would urge, again, to avoid contextual problems, to avoid ambiguity, that the Court read it as such. Mr. Seidel also wanted me to tell the Court I think very correctly all those cases that the Court mentioned, and the Court noted that perhaps the issue wasn't raised; cases where issues are not raised should not be precedential, Your Honor.

We are raising the issue today. We don't know why it wasn't raised in other cases. But to us, it became a very obvious issue.

And the final point I'd like to make, we touched upon it yesterday. Again, I don't want to steal Mr. Parham's thunder. I know he's going to go last. But if the Court is inclined to take some time, short time, and then if the Court is inclined to find what we call standing and schedule an evidentiary hearing later, the Court mentioned yesterday that we'll talk about what Mr. Seidel's role may be or not.

THE COURT: Sure.

MR. RUKAVINA: I just want to add that ambiguity ought to be avoided at all cost. I think that if the case is in Chapter 7, it should remain clearly in that, so that everyone knows what their roles are, so that debtors aren't opening DIP accounts, so that there's no 363(b) and subsequent questions as to what is an ordinary course transaction, so there's no 549.

If we're going to wait until sometime in January for the evidentiary portion, then Mr. Seidel humbly suggests even if he has to kick the 341 down the road a little bit that he wants to know what his duties are. And because they're still in the state to protect, everyone's best served by it staying in a 7 unless and until the Court actually orders otherwise. Thank you, Your Honor.

THE COURT: Thank you, Mr. Rukavina. I appreciate that.

MR. SILVERSTEIN: Your Honor, can I have ten seconds

just to clarify something that counsel just said? I think he misspoke a drop. May I?

THE COURT: You think he misspoke?

MR. SILVERSTEIN: I think he inadvertently misspoke because when he was talking about who has authority to act for a corporate debtor under 706(a), there needs to be the distinction between pre-entry of order for relief and post-entry of order for relief.

Pre-entry of order for relief, as we typically see in a voluntary is before the order for relief is entered. The debtor has corporate authority, assuming it exercises it properly. It's post -- it's after the order for relief where there's the -- where the debtor does not have authority, and the trustee retains that authority.

THE COURT: Okay.

MR. SILVERSTEIN: That's all I wanted to make sure the record was clear on.

THE COURT: Okay. Thank you very much, Mr. Silverstein.

All righty, Mr. Parham.

MR. PARHAM: Your Honor, could we just take a five-minute break before we start with this?

THE COURT: All righty. That's fine. We'll take a -- it's 12:25. We'll be on recess until 12:30.

THE CLERK: All rise.

UNIDENTIFIED SPEAKER: Your Honor, I didn't hear -- I'm sorry. I didn't hear what Mr. Parham said.

THE COURT: Mr. Parham asked for a short recess, so we're going to recess from 12:25 to 12:30.

UNIDENTIFIED SPEAKER: Okay. Thank you.

THE COURT: You're welcome.

THE CLERK: All rise.

(Recess from 12:25 p.m. until 12:33 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right, ladies and gentlemen, we're going to go back on the record in case number 22-31641, Goodman Networks. I think when we -- before the break we had concluded closing arguments primarily with respect to the objecting creditors. And I'll now hear from the debtor.

Mr. Parham.

MR. PARHAM: Well, the arguments, Your Honor, have morphed as we've gone along here. We started with the question as to whether or not the debtor lost the ability to continue with an involuntary. And somehow that's moved on to state law issues which were raised just Sunday, in addition not what we'll call the federal issues under 706.

You know, as we said yesterday, and I'll start with 706. And I understand the Court's got some corporate authority issues that we're going to be discussing here

shortly. But to start with under 706(a), we do think it's a plain reading of the statute. And it says debtor, and just like I think the Court noted that there's a difference between trustee and debtor, there are plenty of sections of the Bankruptcy Code, plenty of provisions that talk about individual debtor, distinguishing individual debtor from debtor.

And it's not surprising that in Chapters 12 or 13, which are only individuals, that you would talk about the debtor -- or 13 in particular, or 9, which is a municipality. You talk about the debtor because there's no debtors other than a municipality.

But the Court -- Congress clearly knows how to make a distinction, and it didn't make the distinction in Section 706(a). The other point I would make with respect to 706(a) is that it says that the debtor may convert a case under this chapter to -- at any time. It doesn't say prior to the appointment of a trustee, prior to the entry of an order for relief.

The statute says that the debtor may convert a case under this chapter at any time. And if you can convert, then certainly it means that you can file a motion to convert. Certainly, it means you can go to a contested hearing on a motion to convert particularly in the aftermath of Miramar.

So to me, to us it's clear that we have a right under

the federal statutes to move to convert and to prosecute the motion, notwithstanding the appointment of a trustee. I think the Court was right that C.W. Mining deals with the ability on an appeal as opposed to -- where you were talking about appellate rights versus what you can do in the bankruptcy case. And if we got to an appeal, then we would address those.

But what they're doing -- what they're asking the Court to do is to take an extreme minority position at this point. One which is contrary to the practice in this district, when you look at Foster and you look at Brake Bill (ph.). And in those cases you have trustees appointed and the debtors are prosecuting motions to convert. In Miramar in front of the Supreme Court, the debtor is prosecuting a motion to convert over the objection of a trustee.

And the argument, frankly, that you can't consider cases where issues aren't raised, such as the standing issue -- cases where the standing issue wasn't raised ignore the fact that courts always have the obligation to look at jurisdiction. And what they're basically arguing is that there's no jurisdiction for a debtor to bring a motion to convert once a trustee has been appointed.

And it's not clear to me at this point -- at one point in time, I thought they were arguing that we didn't have the motion -- the authority to file the motion to convert.

Then it seemed that they were saying well, you lost it once a trustee was appointed. So you could file it, but you can't prosecute it.

I would argue that we can file it and we can prosecute it. And I'm not sure which way -- and obviously, it doesn't make a whole huge difference here which way the -- you know, because either way, if we're out, we're out. But we shouldn't be out.

And with respect to the cases they cited, I would just note that the Fourth Circuit opinion they cited was unpublished. It was all of about one paragraph long. Bear Creek basically just followed C.W. Mining.

And again there, I think it's significant that it was an 11 that was converted to 7. And so we are talking on appeal, which was the first point in time at which a Chapter 7 trustee would have appeared.

So we think that under the case law, under the practice, under the plain reading of the statute -- and I know the Court spend a lot of time with it, and I won't spend a lot of time with it. It's very clear that we have standing to be here and to prosecute a motion to convert back to Chapter 11.

And frankly, and contrary to counsels' argument, the debtor gets to choose the chapters generally speaking, unless there's a cause otherwise. The cause isn't a creditor vote, as Mr. Rukavina seemed to suggest that we all these creditors

who don't want it in Chapter 11, so we shouldn't do it. But it's not a creditors' vote. The debtor does have that option.

So with that, I will turn to the corporate eligibility issue. And the first thing I would note is that Mr. Rukavina handed up Texas statutes earlier today. These statutes, when it refers to Chapter 11 it's referring to Chapter 11 of the TBOC, not Chapter 11 of the Bankruptcy Code. This whole section deals with a voluntary winding up under state law. It has zero applicability to Chapter 11 bankruptcy.

And I think the Court would note that to the extent it was suggested that you needed shareholder votes to file a Chapter 11, I think the Court knows that is not what happens. So at the outset, I would simply say that they completely missed on that. And those statutes are not applicable to Chapter 11 bankruptcy cases.

So going along, so what is the evidence on corporate authority? The evidence is that Mr. Nelms was appointed as a director, sole director. That Mr. Nelms approved filing the motion to convert. That was his testimony. And so you do have the sole board member approving the filing of the motion to convert. So to the extent that board approval -- and in that capacity, which is the only capacity he had with the company, so you do have board approval of filing the motion to convert.

If you're talking about the testimony with respect -- the consent obviously is in evidence, the consent of the shareholders reciting the bylaws. And we've proved up all the signatures were received. The timing of the signatures I don't believe is in evidence. What is -- what was discussed was the timing I think of Mr. Goodman sending the signed consents to Mr. Nelms.

Whether those consents have been signed -- well, they obviously were signed prior to that time. But the exact time that they were signed I don't believe is in evidence. And I would argue that, in fact, that's in essence the ships passing in the night that the Court indicated yesterday. I mean, it all happened within a very short period of time, within -- frankly, within a few minutes of each other one way or the other.

But the consents were in place before the motion to convert was filed. So you have a duly appointed director, who had -- who authorized the filing of the motion to convert, if, in fact, you would equate a motion to convert with the petition. So you have that.

In terms of the retention of Mr. Nelms, which was signed by Mr. Goodman, Mr. Goodman --

THE COURT: Signed by Goodman MBE.

MR. PARHAM: Right. Goodman MBE, which was the majority shareholder of the debtor. But then you also had the

consent appointing him, so I think it's a little bit of belt and suspenders between the two.

THE COURT: Is it belt and suspenders?

MR. PARHAM: I think it is. I mean, he was appointed, which -- and then do you have to have an employment agreement? Not necessarily. I mean, I think it's very common if you do, but I don't think there's any -- I don't think there's any requirement that any employee or -- in Texas necessarily would have an employment agreement.

THE COURT: Okay. So let's take a step back, and let's take these in order.

MR. PARHAM: Okay.

THE COURT: First, we have the consulting agreement that was admitted as FedEx's 8. That consulting agreement, how is that a valid document?

MR. PARHAM: Well, okay, Sondra (sic) Sondrup, if I've pronounced the name correctly.

THE COURT: Correct.

MR. PARHAM: The testimony is that she was given the authority by the company, by Mr. Frinzi when he was the director and CEO to sign contracts on behalf of the company. And that that authority continued. I mean --

THE COURT: Was she -- okay. Let's -- I understood Mr. -- and I will go back and listen to the testimony again. I understood Mr. Goodman's testimony to be he assumed Mr.

Frinzi gave her authority. This was his assistant. This was his personal assistant who was executing on behalf of the corporation a consultant agreement --

MR. PARHAM: I think that --

THE COURT: -- with Goodman MBE, not with Mr. Goodman but with Goodman MBE to the tune of 450,000 dollars. Okay? Is she -- she's not an officer, we know. Correct?

MR. PARHAM: She was not an officer.

THE COURT: Okay. How does she have authority to do this?

MR. PARHAM: Well, I come back to she was given authority by Mr. Frinzi. And I believe the testimony was that he was -- she was given that authority, that that's what she was. I mean, we can all I suspect go back and listen to whether that was assumed or whether that was the case.

THE COURT: Sure.

MR. PARHAM: But I believe the testimony is that that was, in fact, the case. And, in fact, she was signing, and she was -- had been. I think the testimony also was that she was dealing with lawyers. She was dealing with insurance companies. She was dealing with all manner of people who were dealing with the corporation. So in practice, certainly, she was necessarily executing and conducting business on behalf of the corporation.

THE COURT: So at a time when there were no -- I

mean, where I'm struggling, Mr. Parham, is this. A company does not act through its shareholders. A company does not act through its directors. A company acts through its officers and its employees.

MR. PARHAM: Okay.

THE COURT: Okay? So we'll have to assume, first of all, that this employee had authority to enter into a consultant agreement, and it's an insider transaction. Okay?

MR. PARHAM: Yeah.

THE COURT: It is a transaction between the company and its -- I think what's been described to me as its majority shareholder. Correct?

MR. PARHAM: Um-hum.

THE COURT: And its majority shareholder. And this is at a time when there is no office of the company -- there is no officer of the company today. Okay? Who is going to act for the company?

MR. PARHAM: The consent gives Mr. Nelms, I think, the ability to execute any and all documents. In essence, he's appointed the director. He's also given wide latitude, and he's given wide latitude to appoint someone to carry out those tasks.

But I'll go back to -- and let's just talk about what the situation was with Goodman. Mr. Frinzi was the sole director and the sole officer until his resignation. And from

that point on, the company mainly was scrambling to replace him. And there was a period where it looked like it'd be Jonathan Goodman, then it became John Goodman. And John Goodman stepped in and began effectively running the affairs of the corporation.

THE COURT: But is it John Goodman, Mr. Parham? Or is it an entity -- the consultant that was named was an entity.

MR. PARHAM: Well, I think MBE --

THE COURT: Was the majority shareholder.

MR. PARHAM: Well, the answer is MBE essentially appointed Mr. Goodman to do that, to be the individual who would carry that task out.

THE COURT: Where do we have that in evidence?

(Pause)

MR. PARHAM: Well, I believe it would have to -- it's not in the consulting agreement that I can see. I believe it comes from -- oh, wait, wait, here it is. I'm sorry. We do have it.

THE COURT: Which agreement?

MR. PARHAM: The consulting agreement itself.

THE COURT: Okay.

MR. PARHAM: I was thinking that was a big mess. If you go down to paragraph 2 compensation, little (i), John Goodman will serve as representative for the MBE Group and

will be the sole recipient of the consultant fee and will be responsible for all taxes associated with the consultant fee.

THE COURT: Okay. Thank you.

MR. PARHAM: So they do appoint -- they do say John Goodman is going to be the person --

THE COURT: Okay.

MR. PARHAM: -- who's handling it.

THE COURT: Okay.

MR. PARHAM: And, in fact, he was. And I think the testimony is that he was, in fact, acting in this capacity before this agreement finally got executed on September 4th. And, in fact, you'll notice that the MBE Group signed it on September 23rd. So it was -- had been in the works for some period of time before Samantha -- Sondra finally signed it on October the 4th.

So he was effectively directing it. And at the time, for example, that the objections to the involuntary petition were filed, and the agreement -- the agreement trailed, but the agreement basically what had been represented it would be him, and what the MBE Group had signed. And that's how that worked, and it did designate that Mr. Goodman would be the representative. And that's the capacity in which he signed the engagement letter.

THE COURT: But again, so now we are to understand that a consultant to the corporation hired the independent

director?

MR. PARHAM: He entered into the engagement agreement with Mr. Nelms. The shareholders appointed the director. I don't think that Mr. Goodman could have appointed him. But he did sign as in the capacity as the representative of the manager, pursuant to the consulting agreement. He did sign the engagement letter. It's not the most common.

THE COURT: Sure.

MR. PARHAM: But the notion that nobody was running the ship, no one had authority is just not true. And --

THE COURT: Is it?

MR. PARHAM: Well, you had a --

THE COURT: I mean, what is a secretary -- their CEO's former secretary? And again, like Mr. Rukavina said, I'm not being -- I'm not being derogatory, but essentially the CEO left the company and left his personal assistant in charge?

MR. PARHAM: Well, the chief of staff.

THE COURT: Okay. Okay.

MR. PARHAM: I mean, we can debate the title.

THE COURT: We can debate the title --

MR. PARHAM: We can debate the title.

THE COURT: -- chief of staff.

MR. PARHAM: But there was a person. There was a person, and that person --

THE COURT: Who was not an officer and not a director.

MR. PARHAM: Right.

THE COURT: And at the time she entered into it, there were no directors of this company. There were no officers, and there were no directors. The company was rudderless.

MR. PARHAM: At the time that she entered into the consulting agreement, it's true there were no officers or directors. And she was operating under the authority that had been given to her by the director --

THE COURT: Is that reflected anywhere?

MR. PARHAM: Huh?

THE COURT: Is that authority directed -- reflected anywhere?

MR. PARHAM: Well, the evidence is Mr. Goodman's testimony.

THE COURT: All righty.

MR. PARHAM: Do we have a -- no, we don't have a formal corporate document.

THE COURT: Are there bylaws, Mr. Parham?

MR. PARHAM: The corporation has bylaws, certainly, yes.

THE COURT: And did the bylaws say that the -- what do the bylaws for the -- and I recognize they're not in

evidence, but I'm assuming these bylaws say that essentially the shareholders have appointed a board. And the board has appointed officers. And that the affairs of the corporation will be handled by its officers. Am I incorrect?

MR. PARHAM: I don't know is the answer. They're not -- the bylaws are not in evidence. To the extent that there's a reference to it, it is in the consent agreement which references the bylaws. So they do have bylaws. And those bylaws call for a majority shareholder of the -- for appointment of a director.

THE COURT: But how do I know that these shareholders have the authority to act?

MR. PARHAM: Well, the only evidence is the testimony that these shareholders are the majority. And the reference in the consent to the bylaws talks in terms of majority -- the majority of the shareholders consenting as validity for the -- well, look, as the validity for the act. If you go to --

THE COURT: I mean, I recognized, Mr. Parham, that --

MR. PARHAM: In the lead in -- in the lead -- I'm sorry.

THE COURT: Okay. I'm listening.

MR. PARHAM: Yeah, just in the lead in to the written consent, the undersigned shareholders holding a majority of the issued and outstanding shares -- so you have that, and you have Mr. Goodman's testimony.

THE COURT: Mr. Goodman testified that he had never seen them. He's not a shareholder.

MR. PARHAM: No, he said -- he testified he knew who the shareholders were. He had been a shareholder. He testified he knew who the shareholders were. That Goodman MBE Group was itself held a majority interest because that was necessary in order for it to be a minority-owned business enterprise. And that the others also were shareholders. And MBE alone would have been a majority of the issued and outstanding shares. That testimony is in the record.

THE COURT: I'm having a hard time, Mr. Parham, taking the testimony of a former shareholder who at best entered into a transaction with an insider in appointing him as a consultant at a time when there was no officer or director. I'm having trouble taking that as the debtor's best evidence that this written consent of the voting -- of shareholders, again, is an appropriate act to A, ratify that consulting agreement; B, appoint a director. Because of course I don't know what majority of shareholders are needed to appoint a director. I don't know who the directors ever were and what the proper process is for their replacement. I don't have any of that in front of me.

MR. PARHAM: Well, I think the testimony and the evidence is that Mr. Frinzi resigned. And that there were no directors until the consent. There's no evidence of any other

directors, and there were no other directors. And then --

THE COURT: Okay, so prior to -- so this company has never had any directors?

MR. PARHAM: No. No, that's not true.

THE COURT: Okay. Who were they?

MR. PARHAM: Mr. -- well, Mr. Frinzi was a director.

THE COURT: He was a director? Okay.

MR. PARHAM: Mr. James Goodman was a director.

THE COURT: Okay.

MR. PARHAM: I think if you go to Exhibit 15, and I don't have the Exhibit 15 that was introduced that talks about a number of -- unfortunately, it also meshes a number of companies, so I can't look at that and tell you who all the directors were. But I know that at one point in time, and I think until the end of 2021, James Goodman was the director. And then Mr. Frinzi was the director throughout 20 -- 2022 until his resignation. And it his tenure may have started as a director earlier.

So I mean, the company's been around for a decade, and they had directors throughout and boards and whatnot. I'm looking at Frinzi. Frinzi became a director -- CEO 10/20 /21. It doesn't say when he became a director, but he was a director in 2022. I'm looking for James Goodman, board of directors from 10/1 2020 to 12/31 2021. I'm sure if we go back into the corporate records -- I wasn't aware I'd need --

this company's been around since what, 2013 or so.

THE COURT: Well, I just note that there has been no director --

MR. PARHAM: And the --

THE COURT: -- in this company since October of 2021, according to its interrogatories.

MR. PARHAM: No, that's not true.

THE COURT: Oh, okay. Well, then show me where I'm mistaken.

MR. PARHAM: According to the interrogatories, Mr. -- the interrogatory answer shows James Frinzi -- well, he didn't say he was director, but he was the director. And if that is incorrect -- but he was the director until his resignation.

MR. SILVERSTEIN: Your Honor. Your Honor, is Mr. Parham testifying? I apologize to interrupt, but he just said -- Mr. Parham just said the documents don't say that, but he was. So --

THE COURT: Thank you, Mr. Silverstein.

MR. PARHAM: Well, the testimony is that Mr. Frinzi was the director until -- I mean, just say it that way. So if the interrogatory --

MR. SILVERSTEIN: It's not clear, by the way, that he was ever a director.

THE COURT: Mr. Silverstein, I'm going to ask that you not interrupt during Mr. Parham's closing.

MR. SILVERSTEIN: I apologize.

THE COURT: Thank you.

Mr. Parham.

MR. PARHAM: I mean, that is the testimony that Mr. Frinzi was the director up until his resignation in September of 2022.

THE COURT: And you're saying that that was Mr. Goodman's testimony?

MR. PARHAM: It was Mr. Goodman's testimony.

THE COURT: Okay.

MR. PARHAM: As a practical matter, if you go back into the history of this company, of course, it went through a Chapter 11 in October of '17. And it had been around for a number of years before that. Obviously, it existed and operated with directors and with the board and whatnot. It was -- to the extent that it was in a wind-down mode in 2022, you were down to one director and one officer until that person resigned. And then what do you do? I mean, you move to replace him, which is what happened.

THE COURT: And so rather than replacing Mr. Frinzi as what I can only assume was the then sole officer of the company, because there's no evidence there was another officer of the company immediately prior to the involuntary, the thought was to make Mr. John Goodman a consultant. But again, he's not an officer.

MR. PARHAM: That's correct.

THE COURT: Okay. And so we're -- or are we not -- we're still in the exact same situation as we sit here today. There are no officers of this company with authority to act.

MR. PARHAM: I think what you have is a director whose authorities -- basically, if you look at what his authorities are, they essentially encompass many of the obligations or the responsibilities and abilities of an officer because he has the ability to -- under the consent, he has the ability with respect to this case. And again --

THE COURT: I think Mr. Nelms' testimony was that essentially the consultant, Mr. Goodman, would act under his direction.

MR. PARHAM: He said -- he did say that Mr. Goodman, to the extent he was acting would be acting under his direction. The paragraph in the consent that talks about his abilities to act, said the independent director shall, acting alone in each case and without necessity of any other action or approval of the voting shareholders or any other person, have the power and authority in the name and on behalf of the corporation to make or cause to be made and to execute and deliver all such agreements, documents, instruments, certifications, and to do and cause to be done all such acts and things, and to take all such steps as may at any time or times be deemed advisable, expedient, convenient, necessary,

or proper for or on behalf of the corporation and/or the subsidiaries in connection with or related to the involuntary bankruptcy case, which is this case. This is the last paragraph on the first page of the consent.

THE COURT: Right. And that is not unlike a lot of corporate resolutions.

MR. PARHAM: Right.

THE COURT: Where a director would put the company in.

MR. PARHAM: Right.

THE COURT: So what we've got here is a situation where a director is being appointed. But again, the company doesn't act through a director. The company acts through an officer.

MR. PARHAM: Well --

THE COURT: Or no? I mean, correct me if I'm wrong.

MR. PARHAM: What you have is you have a director who's basically been given the scope of his authority extends to, in essence, types of actions that you might otherwise expect of an officer. And so that is -- I mean, it's a valid corporate document, and it may not be the way it always is, the way it always happens, but it basically gives him and Mr. -- the designee, if he decides to designate someone. He could appoint an officer to take any and all actions on behalf of the corporation and in connection with these cases,

including to execute -- in the next paragraph, execute and file schedules.

It's a fairly standard resolution basically giving the director the same powers that you might typically give an officer or designate to a CRO, for example. And it's not inconsistent, frankly, with the engagement, which gives Mr. Nelms the powers of a Chapter 11 trustee basically.

So obviously, it was the intent of the shareholders that he be given wide authority, not only as a director but, in essence, the duties of an officer if it didn't go so far as to specify that you were also the CEO. I mean, because in essence that is -- if you look at this, that is how he's acting. And that is the authority that he's granted under here.

And I would suggest that failing to put a title on it shouldn't be fatal. That is form over substance. When you look at the substance of what he's been authorized to do, it's clear that this is not a rudderless ship. You have a director who has basically been given the powers of an officer as well as the powers of a director.

THE COURT: Thank you, Mr. Parham.

MR. PARHAM: Okay. Let me see if there's anything else. I really feel like I've --

THE COURT: Take your time.

MR. PARHAM: -- said my piece. Yeah, there are just

a couple of comments that were made. The idea -- Mr. Silverstein's comments he's made that it was all a ruse, the motion to convert. I think the Court is aware from -- because you've been here and you've seen the filings, there were a number of joinders filed last week. And up until that time, the debtor's intent was to contest the involuntary filings. The joinders obviously brought about a change of strategy. It wasn't a desire to delay discovery or prevent anyone's discovery. And in fact, the -- a corporate designee and Mr. Konicov for CFGI was in his deposition when the order for relief was entered, which -- at the request of the petitioning creditors.

We never sought to put off or delay John Goodman's deposition. The fact is that I think it was Federal Express that wanted more time to review documents in order to -- so we rescheduled it.

James Goodman, who is not John -- James, independent, and Mr. Frinzi for their own reasons sought to continue their depositions. But we never even requested Mr. Goodman's deposition be continued and, in fact, had the order for relief not been entered, I'm sure he would have gone forward on his deposition on that Tuesday or the week before, had it not been rescheduled to give parties more time to review the documents that we produced.

It's not a ruse. It was simply that there was a

change of strategy based on an avalanche, quite frankly, of additional joinders that relate to Mr. Langley's credit I think that he recruited. So there is that.

I would also note that, again -- that this whole state law issue of -- was something that arose Sunday. And in fact, it doesn't appear in any of the briefs other than Mr. Rukavina's brief, which, for the most part, said we don't know. And that was really about all it said with respect to state law authorities and was mainly centered on the argument that Mr. Langley has advanced that once Mr. Seidel was appointed we lost all authority to go forward.

So those were the -- and that's really been the focus of our response here on this particular issue.

But I do think it is not perhaps -- there's a word I'm searching for, standard, customary the way this all came down. But I think they got there on the state law issues. I think that is the testimony that you have -- the consulting agreement was executed on behalf of the corporation by someone who was given authority to execute documents on behalf of the corporation, that the MBE group designated Mr. Goodman as their S&E (ph.). The Board -- I mean, the shareholders -- a majority of the shareholders, as the evidence, appointed a director. And the director had expanded powers and included in those powers were the powers to direct the filing of the motion to convert.

So I think we get there. We just don't necessarily get there the same way that you might see in most other cases.

THE COURT: Thank you, Mr. Parham.

All right. Have the parties had an opportunity to confer on the hearing that will be set for what we'll just call the next stage on the motion to convert?

MR. PARHAM: We have not. I'm sorry.

THE COURT: Please.

MR. PARHAM: I know I need to step up here. I guess my voice just doesn't carry in my old age.

THE COURT: Yeah, you do have a soft voice, Mr. Parham.

MR. PARHAM: In my old age.

THE COURT: Mr. Rukavina, you do not, in case there was any question.

MR. PARHAM: He can go to the back of the room probably and talk.

THE COURT: And actually, I suffer from the same affliction that he does. It's a rarity that someone didn't hear me.

MR. PARHAM: Yeah. So I mean, I think the Court threw out the date January 9th yesterday as a possible date.

THE COURT: Which is a Monday.

MR. PARHAM: Which is a Monday, and we would be happy with that. We think that gives the parties ample time. As a

practical matter, a lot of the discovery has been done already I think, and the issues were framed. I think everybody -- everybody who was a combatant so to speak showed up here yesterday pretty much ready to go forward. I understand that they may want some additional discovery, but we would as that we could do this on an expedited -- not an expedited but a prompt basis I guess is the best way to say it.

THE COURT: Okay. I'm trying to get to my calendar.

MR. RUKAVINA: And I'll just say, Your Honor, this case is not about me. But I'll be coming back from Europe from -- coming on the 15th of January. I've already -- first time in a long time I'm not going for Christmas in years because I got court, so if the Court and the parties can do January 16th. If the Court can't, then of course Mr. Berghman will handle it from the trustee's perspective, but I will be in Europe until January the 15th. I'll leave January the 5th.

THE COURT: All right. Let me hear from the creditors.

MR. SILVERSTEIN: Your Honor, Paul Silverstein, first before that issue, is there any opportunity to very briefly respond to some of the things Mr. Parham was attempting to say, or are we done with that?

THE COURT: Do you have something --

MR. SILVERSTEIN: I mean, I would need two minutes to --

THE COURT: -- new and different, Mr. Silverstein?

MR. SILVERSTEIN: Is it new? I mean, new and different is subjective but let me --

THE COURT: Do you think that what you are about to say I think is new and different?

MR. SILVERSTEIN: I think so, but as you know, I've been wrong before. The state law issues arose because the debtor introduced no evidence that they had valid corporate authorization for any of the things that they have done in this Chapter 7. That's number one.

Two, there was no testimony or other documents saying that Frinzi was ever a director. Everything they've given us says that Frinzi was an officer. I don't recall seeing any documents or hearing anyone say Frinzi was a director until today. And if you look at the attached Exhibit 15, which they gave to FedEx, or the attached C suite or board of directors info that they gave to us, Frinzi is not listed as a director. These two attachments were produced in response to interrogatories. They're verified by John Goodman and under penalty of perjury.

And finally, there is no evidence that Frinzi's chief of staff or administrative assistant, or whatever the fancy title is today because remember, secretary is not used anymore today, which I learn every day when I use it. I think it's executive professional assistant is the new title. There's no

evidence that Frinzi's so-called chief of staff had authority to enter into agreements on behalf of the company.

John Goodman's testimony was that he -- Frinzi gave her this authority, and that's not evidence. It's pure speculation with no documents to support it. And similarly, there's no documentary evidence that the shareholder resolutions are proper. The company's governance documents are not in evidence. Testimony about what those documents say is pure speculation and it's -- it's not -- I think Your Honor can give it zero weight.

And the debtor has given us nothing to go on other than speculative testimony that any of the actions taken to file the motion to convert were proper. So I think on all those points there's an absolute lack of corporate authority beginning with the fact that the instrument that purportedly imposed -- by which Mr. John Goodman imposed himself as the consultant -- if it's not a valid agreement, then there's no ability for him to retain properly Mr. Nelms as a so-called director. And that's it.

THE COURT: Thank you, Mr. Silverstein. When would you like the hearing to be, Mr. Silverstein, the next hearing?

MR. SILVERSTEIN: I think that -- well, first of all, I would hope there's no hearing because I hope you rule the way I hope you rule. But if there -- in the event that you don't rule the way I hope you rule, I think that there's a lot

of discovery that we were essentially stopped from completing that needs to be done. I don't -- I think at least the 16th of January should be the earliest. I don't want -- we had people lined up to take those depositions. We were prepped for those depositions. I don't want to jam that guy in during a Christmas break for depositions. Nor do I think the parties are going to deal with that very well. So I would think no sooner than the 16th and maybe later. That's my only comment.

THE COURT: Okay. Well, the 16th is Martin Luther King Day, and so it would --

MR. SILVERSTEIN: 17th.

THE COURT: -- be the 18th if -- having Ms. Harden listening and judging me. She's telling me that we would have the 18th open, so if it was going to be during that week, it would be the week of the 18th. I mean, excuse, me, it would be the week of the 16th. It would be January 18th if we did it that week because that's the day that we have -- just one second.

Ms. Harden is asking me for a time estimate. I'm telling her all day. I'm not even going to ask.

MR. RUKAVINA: And Your Honor, in support of that date, the trustee is going to be serving discovery. I'm sure Mr. Parham will cooperate. We are going to go into the privilege, so not only do we have Christmas and New Year's and my personal travel plans, which are secondary, but we are

going to want -- Mr. Silverstein has got some discovery. We've got none. So again, I would urge that the Court -- if we're going to have an all-day evidentiary hearing, the 18th would be probably the earliest that it can reasonably be done.

THE COURT: Okay. Thank you, Mr. Rukavina.

MR. PARHAM: I agree with --

THE COURT: Right. Because one of the issues I was looking at is the week of January 9th is very, very hard because obviously you have Hanukah is ongoing. You have the Christmas holidays. You have New Year's, et cetera.

All righty. Mr. Langley, thoughts on --

MR. LANGLEY: Yes, Your Honor, and if I may take just a brief liberty to address one correction I heard from Mr. Parham, so that -- it won't take me even a minute. But he referenced 21.501 as having been the trustee. He said that Chapter 11 was referring not to Chapter 11 of the Bankruptcy Code but the Texas statute. I want to be clear that FedEx is not relying on that provision. We're relying on 21.401 and 21.101, and those two provisions say that the board of directors has to act. And if you act through shareholders, it has to be done through all the shareholders. So it's not just the majority, it's all the shareholders, and that's 21.401 and 21.101. They have no application to the argument that was advanced by Mr. Parham.

THE COURT: Okay. Thank you.

MR. LANGLEY: And then for -- as far as the timing goes, I would say January 18th would be the earliest we could do it. One question I did have for the Court on that. Are we going to reintroduce all the evidence we did today because I think there was a good-cause factor based on the evidence we've already put forward on this authority issue to not convert. Are we going to redo that or are we going to just proceed under other bases for cause?

THE COURT: I would assume at an evidentiary hearing -- obviously, if you wanted to rely upon something previously admitted at the hearing, you could so move. But -- and certainly, the evidence and the questioning meandered from time to time from the authority and standing issues that we were here to discuss and touched upon cause. But I would assume that the parties should be prepared to put on their case on what we'll loosely call cause. Or essentially, the test on -- as Marrama put out on whether or not a debtor should have an absolute right to convert or the issues related to evidence of bad faith, evidence of futility, et cetera.

MR. LANGLEY: Yes, Your Honor.

MR. PARHAM: Your Honor, this is --

THE COURT: Just one moment, Mr. Langley.

Mr. Parham, come to the podium please.

MR. PARHAM: I would just suggest with respect to the evidence that was presented yesterday, we should be able to

work on determining in advance specifically what evidence would carry over. And we're certainly open to that if Mr. Langley has designations. We may as well.

I don't want to sit here and be four hours of testimony just be repetitive. I do agree that we should all put on our cases in full, but to the extent that there was testimony yesterday that one or the other of us would use, I would hope that we could just designate that and let the Court know with specificity, not just the transcript.

THE COURT: No, again, if parties wanted to basically take -- similar the way that people would do with deposition transcripts for a hearing. If they want to get the transcript of the hearing yesterday and then designate what portions of testimony they intend to rely upon. Of course, it's not stopping the debtor or the creditors or the trustee from putting on their case that day.

MR. PARHAM: Right.

THE COURT: But to streamline that trial, I would certainly entertain transcript excerpts from -- or testimonial excerpts as well as -- we only admitted, if my memory serves, maybe six or ten exhibits.

MR. PARHAM: A handful of those.

THE COURT: Yeah.

MR. PARHAM: Right.

THE COURT: Not that many even. And so those I think

could certainly carry to the next hearing.

MR. LANGLEY: Okay. We'll work with Mr. Parham on that then. And then from a standpoint of what we'll have to take to get to the hearing, I would say that we are going to investigate a number of significant transfers that were made by the debtor related to this entity, to transfer cash and other assets out.

I will tell you from our experience in this case already we -- as you can see from by the authority issue, we struggle to find somebody that could do the document searches, somebody that could act for the debtor. And that's probably why you saw a lot of pre-petition discovery -- or pre-order for relief discovery disputes. I don't know how that's going to resolve, but I just bring that to light. There may be additional problems given the state of the debtor at this point.

THE COURT: Well, Obviously, I won't prejudge those. All I'll say that if the debtor wants to be in Chapter 11 it has to have an -- it has to have the ability to at least engage in discovery and get a hold of its operative documents and put up witnesses for deposition. So I am sure that will be the case.

I would say if we -- and again, I'm not going to stand in the way, if folks want to -- if folks can reach an otherwise agreement, and maybe there can't be one, but if

folks can reach an otherwise agreement I'd be willing to entertain that.

But absent that, I do expect that the hearing, if we all agree on the 18th, would be an in-person hearing. I just think it's going to be a lot easier to deal with witnesses and exhibits at an in-person hearing, especially something that's as critical as this one, so I'd say that. So whatever date we agree on, just make sure that folks can be here.

Now, that doesn't stop anyone who doesn't have a primary intent to participate -- excuse me, an intent to participate in the hearing on a primary basis. So for example, if Mr. Schaffer, for example, simply wanted to monitor the proceedings and didn't expect to Q&A witnesses and things of that nature, if he wanted to appear via Webex, that would be allowed. But if you want to make primary arguments, if you want to question witnesses and introduce evidence, I'd ask that you be here live for that particular hearing.

MR. SCHAFFER: Understood.

THE COURT: Thank you, Mr. Schaffer.

Ms. Sixkiller, any input on the date of the next hearing?

MS. SIXKILLER: Yes, Your Honor. The 18th is not ideal, but I can move things if that's the date that works for everyone. Otherwise, for Mr. Sullivan and myself, we have the 19th, 20th, 23rd, and 24th also available.

THE COURT: So the 20th is a Friday. I also have that date open if parties prefer that date.

MR. SILVERSTEIN: Your Honor, just as an addendum --

MR. PARHAM: We are concerned we don't want the train to get too far down the road. It gets hard if we win to put the genie back in the box.

THE COURT: Okay.

MR. PARHAM: So our strong preference is the 9th. If we have to go to the 18th, and I hear what everybody's saying -- if we have to go to that week of the 16th, with all due respect to Ms. Sixkiller, we would like to do the 18th and then have the 20th as a reserve date in case this --

THE COURT: In case time estimates are wrong.

MR. PARHAM: -- goes over. Yeah, because it could go long. I mean, our status conference went two and a half hours, so I'm guessing that -- and our one hour closing arguments now we've been going for two and a half hours I think today. So history is --

THE COURT: Is that why my stomach is grumbling?

MR. PARHAM: History's not on our side.

THE COURT: From the 1:30 docket?

MR. PARHAM: History is not on our side.

THE COURT: All right. Thank you very much, Mr. Parham.

MR. LANGLEY: Your Honor --

MS. SIXKILLER: Your Honor, yes, I can -- I can move the 18th. It's an office litigation training. I can just miss it and not -- and designate another host. The 9th is also available, but I am concerned about getting the depositions done in time.

THE COURT: Right. I think the 9th, given the holidays --

MR. LANGLEY: Your Honor --

THE COURT: -- would be hard. And I think that we would have more discovery disputes than we would have agreements at that point. All righty.

Someone was seeking to --

MR. LANGLEY: Your Honor.

THE COURT: Mr. Langley.

MR. LANGLEY: I apologize. I went through my schedule. I actually have a confirmation hearing where I am presenting the debtor's plan of confirmation on the 17th.

THE COURT: Okay.

MR. LANGLEY: In person here in Memphis. So I'm not sure it's feasible for me to A, prepare but B, to get to Dallas on the 18th. So I apologize for ruining the plans everybody's just about -- that they have made. But I just don't think that's feasible.

THE COURT: All righty.

MR. LANGLEY: I could do the 19th or the 20th if

those were available.

THE COURT: We have confirmation set on the 19th. We can't do the 19th. We can do the 20th, which is not ideal, but is doable. All righty.

Any conflicts on the 20th? All righty. Here's what we'll do. The Court will set the follow-up hearing, which essentially will be the cause portion or the extraordinary circumstances portion of the hearing. We're going to set that for January 20th, 2023 at 9:30 a.m.

Again, that'll be an in-person hearing with the caveats that I discussed if -- same rules apply as if one attorney is going to be doing the primary questioning and another attorney wants to sit back and monitor on Webex, we'll keep the Webex open in that way.

And so that'll be doable.

Pending number one this Court's ruling, which I believe will be a bench ruling but don't hold me to that. I may issue a written order. Pending the ruling on standing, corporate authority, and all of the issues that we have discussed today, this case shall remain in a Chapter 7. And obviously, the duly appointed and acting Chapter 7 trustee, Mr. Seidel, shall remain in place.

I note that we have a 341 meeting that would be set for the 10th. Right, which is obviously ten days ahead of this next hearing. Mr. Parham, is there any reason for this

341 meeting not to go forward?

MR. PARHAM: We really haven't focused on it, to be honest with you.

THE COURT: Okay.

MR. PARHAM: I suppose not. I suppose not.

THE COURT: Okay.

MR. PARHAM: Other than the fact that it'd just be conducted by trustee as I guess it would anyway.

THE COURT: Right.

Mr. Rukavina, or Mr. Seidel, if he wants to speak up personally.

MR. RUKAVINA: Well, I think, Your Honor, certainly --

THE COURT: Okay, please.

MR. RUKAVINA: Yeah, certainly, I have to defer to my client who's the actual trustee. I can see there being benefits to getting that 341 done. I don't want it to turn into a free for all or a deposition. Of course, we'll be deposing the debtor. I'm sure the other creditors will, and I think that Mr. Seidel will certainly open up the floor to other creditors or parties that might have normal 341 questions.

But Mr. Seidel, I don't know if you have anything to add. I think as long as we all understand that it's not going to be a 2004 of the debtor that's going to take place all day,

I think we might as well get her done.

MR. SEIDEL: I would agree with that, but parties should be flexible on that because they set those with a bunch of other ones, so what I typically do is adjourn it and then pick up like at 1 o'clock so we can get a couple hours of uninterrupted question and answers in.

I would ask that the debtor's counsel -- it seemed to me they recently filed additional creditors. Obviously, the notice of meeting of creditors has already gone out, so I'd avail upon debtor's counsel to make sure this notice of creditors goes to any and all creditors, parties-in-interest, and gets mailed out by debtor's counsel because the Court's already done its mailing. Thank you.

THE COURT: Thank you, Mr. Seidel.

So again, I do believe that Mr. Rukavina raises a good point. I am sure that all practitioners at some point have attempted to use a 341 as its own 2004. And I don't think the rules prohibit that, but I don't believe in this particular instance, if the questions were going to be of the nature that would be raised at a hearing only ten days later, and if these same person or persons have already sat for a deposition or are scheduled to do so.

I think there's probably good reasons to both streamline the 341 and allow for the participation of creditors that are not already actively participating in these

cases and on these issues. That's just my two cents. But again, 341's not conducted by the Court. It's conducted by the trustee.

With that, Mr. Seidel, I'll leave it to you. I believe that a 341 meeting is going to have to take place, whether or not it's conducted by you or someone with -- a trial attorney with the United States Trustee's Office. So I am not going to require you to reschedule it at all. I'll leave that to your discretion. But like I said, pending the next hearing, the Court -- excuse me, the case will stay in Chapter 7. And I think that's all we -- that's all we need for today.

The only thing I will remind you is if you haven't done so already, for those parties where I asked you to upload any exhibits that were not already found on the docket during the hearing to please do so.

All righty. Any questions, any concerns, folks?

MR. LANGLEY: Thank you, Your Honor.

THE COURT: All right. Hearing none --

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: -- the Court will -- the Court will move to the 1:30 docket, but the Judge does need to get her prep for the 1:30 docket. Winging it is frowned upon, so the Court is going to stand in recess until 1:40.

(Whereupon these proceedings were concluded at 1:35 p.m.)

I N D E X

C E R T I F I C A T I O N

I, Tamara Bentzur, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

January 28, 2023

TAMARA BENTZUR, CET-824 DATE

AAERT Certified Transcriber